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IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

REICHHOLD CHEMICALS, INC.,
Petitioner,

v.

GERARD A. CASSINO and SALLY CASSINO,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION OF THE EQUAL EMPLOYMENT ADVISORY COUNCIL FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF THE PETITIONER

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To the Honorable, the Chief Justice and the Associate Justices of the United States Supreme Court:

Pursuant to Rule 42 of the Rules of this Court, the Equal Employment Advisory Council (EEAC) respectfully moves this Court for leave to file a brief as amicus curiae in support of the petitioner, Reichhold Chemicals, in this case. The brief is conditionally filed herewith in accordance with Rule 36.1. In support of this motion, EEAC shows as follows:

1. EEAC is a voluntary nonprofit association organized to promote sound approaches to the elimination of discriminatory employment practices. Its membership consists of a broad segment of the employer community in the United States, including individual employers as

well as several trade associations which themselves have hundreds of corporate members. EEAC is governed by a Board of Directors composed of experts and specialists in the legal and practical aspects of equal employment policy. The members of EEAC are firmly committed to the principles of nondiscrimination and equal opportunity in employment.

2. Substantially all of the Council's members, and the constituents of its trade association members, are employers subject to the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.* and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, as well as other equal employment statutes and regulations. As employers, many of EEAC's members maintain severance pay programs providing funds to terminated employees. Also, as potential respondents to ADEA charges, they are interested in encouraging the voluntary settlement of such claims.

3. EEAC's members thus are directly interested in the issue presented on appeal in this case—that is, whether an unexecuted release of claims requested in exchange for exceptional severance pay is admissible to prove liability and particularly to show a willful violation of the ADEA.

4. The issues presented in the petition for certiorari are extremely important to the nationwide constituency which EEAC represents. The lower court's holding frustrates the policy of encouraging settlements without litigation and often may force terminated employees to file unnecessary or unwarranted ADEA claims in order to obtain a valid release prior to granting severance pay. Indeed, the rationale of the Ninth Circuit is not limited to age discrimination charges and could undercut the voluntary resolution of claims under other civil rights statutes, such as Title VII, the Equal Pay Act, or wrongful discharge claims. Moreover, the holding conflicts with

this Court's decision in *Trans World Airlines v. Thurston*, 469 U.S. 111 (1985) that a "willful" violation of the ADEA can be proven only by showing knowledge or reckless disregard of the ADEA, and adopts a minimal standard previously rejected by this court.

5. EEAC's members also are concerned about the implications of the decision below for the future of bona fide severance pay programs. If a request for a release is admissible as proof of liability, employers facing this new and uncertain liability are likely to have strong second thoughts about offering exceptional severance payments without the protection of a release. Thus the lower court's decision could have a chilling effect on bona fide augmented severance pay programs designed to provide all employees with increased economic security during the often difficult transition to new employment.

6. Because of its interest in the application of the nation's civil rights laws, EEAC has filed over 220 briefs as amicus curiae in cases before the United States Supreme Court, the United States Circuit Courts of Appeals and various state supreme courts. A number of the cases in which EEAC has participated have involved the proper interpretation of the ADEA. *See, e.g., Trans World Airlines, supra*; *Lorillard v. Pons*, 434 U.S. 575 (1978); *Shell Oil Co. v. Dartt*, 434 U.S. 99 (1977); *Burns v. Equitable Life Assurance Society of the United States*, 696 F.2d 21 (2d Cir. 1982), *cert. denied*, 464 U.S. 933 (1983). EEAC also has participated in several cases involving the validity of releases of ADEA claims. *See, e.g., Lancaster v. Buerkle Buick Honda Co.*, 809 F.2d 539 (8th Cir. 1987), *cert. denied*, 107 S. Ct. 3212 (1987); *Rynyan v. National Cash Register Corp.*, 787 F.2d 1039 (6th Cir. 1986), *cert. denied*, 107 S. Ct. 178 (1986).

7. EEAC has sought and received permissions from this Court to file briefs in other cases concerning non-

discrimination in employment. See, *e.g.*, *State of Florida v. Long*, No. 86-1685, *cert. granted*, 56 U.S.L.W. 3206 (1987); *Marino v. Ortiz*, No. 86-1415 (*decision pending*); *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385 (1982); *Furnco Construction Corp. v. Waters*, 438 U.S. 567 (1978); *Gardner v. Westinghouse Broadcasting Co.*, 437 U.S. 478 (1978); and *Shell Oil Co., supra.*

8. The written consent of counsel for the petitioner, Reichhold Chemicals, has been filed with the Clerk of the Court. This motion is being filed under separate cover because counsel for Respondent initially indicated that he would give written consent to the filing of EEAC's brief; however, that consent was withdrawn on the same day EEAC's bound brief was received from the printer and was to be filed with this Court.

WHEREFORE, the Equal Employment Advisory Council respectfully moves that it be granted leave to file the accompanying brief amicus curiae.

Respectfully submitted,

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